

<div>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>		Hearing Date/Agenda Number P.C. 9/11/02    Item: 4.a.	
		File Number CP02-020/ABC02-005	
		Application Type Conditional Use Permit	
		Council District 3	
		Planning Area Central San Jose	
		Assessor's Parcel Number(s) 434-06-064	
PROJECT DESCRIPTION			
Completed by: John Davidson			
Location: Southwest corner of Willow Street and S. Almaden Avenue			
Gross Acreage: 0.29                      Net Acreage: 0.29                      Net Density: n/a			
Existing Zoning: CP Commercial                      Existing Use: Commercial			
Proposed Zoning: No change                      Proposed Use: sale of alcohol for off-site consumption at an existing grocery store			
GENERAL PLAN			
Completed by: JED			
Land Use/Transportation Diagram Designation Medium High Density Residential (12-25 DU/AC) with Neighborhood Business District Overlay		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> See Analysis and Recommendations	
SURROUNDING LAND USES AND ZONING			
Completed by: JED			
North: Commercial		CP Pedestrian Commercial	
East: Commercial		CP Pedestrian Commercial	
South: Residential		R-M Multi-Family Residence	
West: Commercial		CP Pedestrian Commercial	
ENVIRONMENTAL STATUS			
Completed by: JED			
<input type="checkbox"/> Environmental Impact Report <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete	
FILE HISTORY			
Completed by: JED			
Annexation Title: Original City			
Date: March 27, 1850			
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION			
<input type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input checked="" type="checkbox"/> Denial		Date: _____ Approved by: _____ <input type="checkbox"/> Action <input type="checkbox"/> Recommendation	
OWNER	APPLICANT		
Alfredo and Amanda Montoya Trust 204 Willow Street San Jose, CA 95110	Noel Montoya 204 Willow Street San Jose, CA 95110		



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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: John Davidson

Department of Public Works

None received

Other Departments and Agencies

See attached memoranda from Police Department Vice Unit and Council Member Cindy Chavez.

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**GENERAL CORRESPONDENCE**

None received

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Noel Montoya proprietor of Supermercado Mexico, is requesting a Conditional Use Permit and Liquor License Exception Permit to allow the sale of alcoholic beverages for off-site consumption in conjunction with an existing Supermercado Mexico store.

The site is located at the southwest corner of Willow Street and Almaden Avenue (204 Willow St) on a 0.29 gross acre site in the CP Pedestrian Commercial Zoning District which allows alcohol sales for off-site consumption subject to approval of a Conditional Use Permit.

The grocery store is located in the Willow Street neighborhood business district. Commercial uses are located to the north, east, and west, and multi-family residential uses are located behind the property directly to the south. The grocery store is located approximately 50 feet from the nearest residence on Almaden Avenue and approximately 500 feet from Washington Middle School, 650 feet from Sacred Heart School. Washington School is one block away from the subject site, and Sacred Heart school is two blocks from the site.

**ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act.

**GENERAL PLAN CONFORMANCE**

The existing grocery store use with proposed alcohol sales is not consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of *Medium High Density Residential (12-25 dwelling units/acre)*. The current commercial use is, however, consistent with the Willow Street Neighborhood Business District overlay. Further, General Plan policy deems existing uses on legal parcels less than two acres in size to be in conformance regardless of the designation.



## ANALYSIS

The primary project issues include conformance with the Zoning Code/land use compatibility and conformance with the Liquor License Exception Permit requirements.

### **Conformance with the Zoning Code/Land Use Compatibility.**

Section 20.80.900 of Title 20 of the San Jose Municipal Code specifies that a Conditional Use Permit for the off-sale of alcoholic beverages can be issued only upon making the following findings as applicable:

1. If the use is closer than five hundred feet from any other off-sale use, the Planning Commission must find that the proposed off-sale of alcohol would not contribute to an excess concentration of establishments that sell alcohol.
2. If the use is closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred and fifty feet from any residentially-zoned property, the Planning Commission must find that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.

Other off-sale establishments are located within the same business district, including one market with a general off-sale license, and a mini-market selling beer and wine. The Police Department has indicated that there currently is an undue concentration of liquor licenses in the area, and the proposed liquor license would increase the overconcentration.

As indicated above, a school is located within 500 feet of the existing store, and residentially-zoned property is located within 50 feet of the store. The store's front entry is oriented towards Willow Street, away from the adjacent residential uses. However, the walking distance from the store entry to the nearest residence is within 100 feet. Based on these conditions, and the recommendation of the Police Department, staff believes that the Supermercado Mexico store is located and oriented in such a manner that the off-sale of alcohol **would** adversely affect proximate residential uses.

**Liquor License Exception Permit.** The applicant is also applying for a Liquor License Exception Permit which is required for liquor license applicants that may be denied by the Department of Alcoholic Beverage Control (ABC) pursuant to Assembly Bill (AB) No. 2897, Caldera Bill. AB 2897 requires the ABC to deny an application for a liquor license "*if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses.*" If the ABC determines that a liquor license application would result in an undue concentration, an applicant may request an Exception Permit from the City based on "*public convenience and necessity.*"

The Planning Commission may grant the Exception Permit if it makes the following findings:

1. The premises are not located in an existing Project Crackdown /Weed and Seed Area or similar areas that qualify for these programs pursuant to the City's Neighborhood Revitalization Strategy.
2. The premises are not located within 300 feet of any public or private school.



3. The City's Police Department has determined that the use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.

The Police Department reports that the crime rate in the area is relatively low and that the site is not in a Project Crackdown area or similar strategy area. The closest elementary school is located over 300 feet from the project site. However, the Police Department has indicated concerns regarding the proposed Exception Permit because of the undue concentration of liquor licenses in the area, and is not supporting the proposed Exception Permit.

Staff recognizes it is a common convenience for the public to be able to purchase alcohol at a supermarket when shopping for groceries and other staples. However, with the presence of two other off-sale establishments within 500 feet of the proposed site, there would appear to be ample neighborhood off-sale opportunities for the public. Therefore, the claim the requested Permit is warranted due to public convenience and necessity appears unfounded. The public benefits of permitting off-sale at the subject site do not appear to outweigh the public impacts.

## CONCLUSION

The proposed use is **not** consistent with the requirements of the Zoning Code and Liquor License Exception Permit and is **not** compatible with surrounding residential and educational uses.

## RECOMMENDATION

The Planning staff recommends that the Planning Commission **deny** the requested Conditional Use Permit and Liquor License Exception Permit and include the following findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium High Density Residential (12-25 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram, and is located within the General Plan-designated Willow Street Neighborhood Business District.
2. The site is located in the CP Pedestrian Commercial Zoning District which allows grocery sales as a permitted use and off-site alcohol sales subject to approval of a Conditional Use Permit.
3. The applicant proposes to offer alcoholic beverages for sale for off-site consumption.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment. The project is subject to San Jose Municipal Code Section 20.80.900, which regulates off-sale of alcohol.
5. The proposed project is located approximately 500 feet from an existing middle school site.



6. The project is subject to the Exception Permit criteria for a liquor license for the sale of off-site alcohol sales. The project site is located in an area with an existing over-concentration of liquor licenses. The site is not located in an area with a high number of calls for police service or a high crime rate.
7. The site is not located in an existing Project Crackdown /Weed and Seed Area or in similar areas, which qualify for these programs based on the City's Neighborhood Revitalization Strategy Criteria.
8. The site **is** located closer than 500 feet from any public or private school (preschool through high school).
9. The City's Police service investigation information (including but not limited to site-specific neighborhood analysis of calls for service) indicates the proposal **would** pose a detriment to the immediate neighborhood or continue current law enforcement problems.
10. The site is located within 50 feet of property zoned and used for residential purposes.
11. Other off-sale establishments are located in the neighborhood business district, within 500 feet of the store.
12. The walking distance from store entry to nearest residence is less than 100 feet.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed location of the off-sale of alcohol use **will contribute** to an excess concentration of establishments which sell alcoholic beverages.
3. The proposed use is located and oriented in such a manner that the off-sale of alcohol use **will adversely affect** proximate residential uses.
4. The proposed project **does not** meet the Zoning Ordinance criteria for approval for the off-site sale of alcohol.
5. The proposal **does not** meet the requirements of the Liquor License Exception Permit process.
6. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested **will**:



- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
- c. Be detrimental to public health, safety or general welfare.

This permit application is therefore **DENIED**.